

IN THE HIGH COURT OF BOMBAY AT GOA.

TAX APPEAL NOS. 79, 80, 81 AND 82 OF 2015.

Zuari Global Ltd.(Formerly
known as Zuari Industries Ltd.)
a company incorporated under
The Indian Companies Act, 1956
(Act 1 of 1956) through its Authorised
Representatives Shri Anandu Vithal
Nayak, having registered office at
Jaikisan Bhawan, Zuarinagar,
Goa 403 726

..... Appellant.

Versus

Pr. Commissioner of Income Tax,
Aayakar Bhavan, Plot No. 5,
EDC Complex, Patto Plaza,
Panaji, Goa, 403001.

..... Respondent.

Mr. Salil Kapoor, Mr. Sumit Lalchandani and Ms. Priyanka Kamat,
Advocates for the appellant in all the appeals.
Ms. A. Desai, Advocate for the respondent in all the appeals.

**Coram:-F. M. REIS,
K. L. WADANE,JJ.**

Date:-16th February, 2016.

ORAL JUDGMENT (Per F. M. REIS, J.)

Heard Mr. Mr. Salil Kapoor, learned Advocate appearing
for the appellant and Ms. A. Desai, learned Advocate appearing for the
respondent.

2. Admit on the following substantial question of law:-

Whether the impugned order passed by the
Tribunal dated 7.7.2015 stands vitiated for not
complying with the natural principle of justice?

3. Ms. A. Dessai, learned Counsel appearing for the respondent waives notice on behalf of the respondent.

4. Mr. Salil Kapoor, learned counsel appearing for the appellant has pointed out that the impugned order passed by the Tribunal is without giving an opportunity to the appellant of an adequate hearing as on the relevant date i.e 7.7.2015, when the matter was posted for hearing the counsel appearing for the appellant was unable to attend the proceedings as his uncle had expired. The learned counsel further points out that it was also brought to the notice of the learned Tribunal that in view of the said death the learned counsel for the appellant would not appear in other courts. The learned Counsel further points out that the learned Tribunal refused the adjournment and proceeded to decide the matter on merits without giving a hearing to the appellant. The learned counsel further submitted that not giving such an opportunity itself vitiates the impugned order though the appellant has a good case on merits. The learned Counsel further submits that the matter may be remanded to the learned Tribunal to decide afresh after giving an opportunity of hearing, in accordance with law.

5. On the other hand Ms. Asha Desai, learned counsel appearing for the respondent has supported the impugned order. The learned Counsel points out that the learned Tribunal proceeded to

decide the matter on merits, as according to her, the appeal had no merits. The learned counsel further submits that all the contentions which were raised by the appellant were given up by the appellant before the Appellate Authority. The learned Counsel, as such, points out that there is no infirmity in the impugned order passed by the learned Tribunal. The learned Counsel further states that Mr. Anandu Vithal Nayak, Deputy General Manager of the appellant was present on the relevant date.

6. The learned Counsel for the appellant in reply to the said contentions has submitted that the purported withdrawal was conditional and, as such, according to him, there was no unconditional withdrawal of the grounds raised in the appeal.

7. We have considered the rival submissions of the learned Counsel appearing for the respective parties and we have also gone through the record.

8. We do not propose to go into the merits of the controversy and as such the rival contentions of both the parties are left open considering the view, we propose to take in the above appeal. In the present case, it is not disputed that the matter was posted on 7.7.2015. It is also not disputed that prior to such date the appellant had only sought two adjournments. On account of some unavoidable reasons of the death in the family of the counsel of the appellant, the concerned

counsel was unable to represent the appellant on the relevant date. The fact that there was a death in the family of the counsel of the appellant is not disputed by the learned Counsel appearing for the respondent. In such circumstances, considering that the appellant are not unnecessarily delaying the matter and as on the relevant date there was justifiable reason which prevented the counsel for the appellant to remain present before the learned Tribunal, we find that the learned Tribunal was not justified to refuse an adjournment.

9. Hence, in the peculiar facts and circumstances of the case and in the interest of justice, the learned Tribunal could have given an opportunity of hearing to the appellant for the subsequent date. Having failed to grant a short adjournment has resulted in passing the impugned order in breach of the principle of natural justice which calls for the interference of this Court. The substantial question of law is answered accordingly.

10. In view of the above, we pass the following:-

ORDER

- i The impugned order passed by the learned Tribunal dated 7.7.2015 is quashed and set aside.
- ii. The Appeals preferred by the appellant before the learned Tribunal is restored to the file of the learned Tribunal.
- iii. The learned Tribunal is directed to decide the appeals afresh after hearing the parties, in accordance with law.

- iv. All the contentions of the parties on merits are left open.
- v Appeals stand disposed of accordingly.

K. L. WADANE,J.

F. M. REIS,J.

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